Coollawyer SM

Advertising Terms and Conditions

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Coollawyer Advertising Terms and Conditions

by

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PREFACE: How Promotional Agreements Protect Your Business

By Judith Silver, Esq., Coollawyer.com

Using agreements in promotional arrangements help clarify each party's goals and limit the liability of the parties.[1] As there are a variety of promotional arrangements, ranging from advertising to cobranding or affiliate programs, the agreements for these arrangements may vary as well.

Advertising Agreements

Traditional advertising agreements, where one party hires another to create and place promotional content, usually for a certain period of time, can range from one page to twenty or thirty pages in length depending on the number and complexity of the agency tasks involved. The advertising agreement should state the responsibilities, in terms of creation, ownership, approval and payment, of the agency and the advertiser.

Advertising Agreement Terms

Content Creation

The agreement should set forth who is responsible for ideas, content and actual creation of the advertising. Importantly, the agreement should also state which party owns the advertising created and this should be set forth with the correct language as required by copyright law.

Content Placement

The agreement should set forth where and in what mediums the agency shall place the advertising and whether booking fees or prior agency relationships are involved.

Deadlines

Any deadlines and timelines for creations, submissions and approvals should be set forth in the agreement so that both parties agree on these dates and are aware of them.

Liability Limits

The agreement should state which party will be liable for errors in the text of the ads and/or in the running of the ads in terms of times and placement. The agency will want to ensure that the advertiser is entirely responsible for approving the text and proofreading and that the agency has no liability for such tasks. The agency will also want to ensure that the agreement limits its liability to amounts it has received under the contract so that its risks

[1] Readers are cautioned not to rely on this article as legal advice as it is no substitution for a consultation with an attorney in your state. Based on jurisdiction and time, the law varies and changes.

remain proportionate to its revenue. The Liability Limit provision should also waives parties' responsibility for indirect and other damages which are not "direct" legal damages.

To explain further, "direct damages" are damages which are directly related to the event causing liability. For example, if I hit you with my car, the medical costs from your physical injuries are direct damages. Your inability to attend your business meeting in Omaha which resulted in your loss of an account and in the lost income from the account are "indirect damages". Parties limit liability for indirect damages because as the scope is so hard to predict, the parties cannot accurately access the risk upon signing the agreement.

Warranties and Indemnification

Any party contributing text or graphics should warrant that its contribution does not infringe the rights of a third party, meaning that its creations are original. If your business does not have "errors and omissions" insurance, this coverage is available and will insure the business in the case of copyright or trademark infringement matters.

The agency will want to be sure that the agreement waives all warranties which may be implied by the Uniform Commercial Code in its state. Although in most situations, implied legal warranties apply only to products rather than services, the conservative approach is to always include the language required by law to waive these warranties.

Usually, the agreement will also include a provision which states that any party contributing content will indemnify the other if its creations infringe the rights of other parties. Indemnification means that in the event that the non-creating party gets sued by another party for copyright infringement, or other infringement of a third party's rights, the creating party must reimburse the non-creating party for all costs and expenses resulting from this event.

A short form Advertising Agreement legal form by the author is available for purchase **here**.

Cobranding and Affiliate Agreements

Cobranding refers to a relationship between parties where one or both parties "brand" or in some way promote the other party on its website. It most often refers to situations where one party's website, the cobranded party, is visible from within the website of another party, the cobrander. Users of the cobrander website see the top or side frame of the cobrander site and a page from the cobranded website within it. The cobranded site can reside on the server of either party, but usually it remains on the cobranded party's server.

Cobranding is different than an affiliate program which typically involve only banners or links to another party's sites. Otherwise, both agreement may have similar provisions. Typically, affiliate agreements are without negotiations or signature and therefore are often more onerous in requirements and terms.

Content Creation

The agreement should set forth that each party will create and host its own website. Usually, the cobranded party will submit a page of code to the cobrander to display on the cobrander site and which, upon click-through, will take the users of the cobrander site to cobranded site. Any deadlines or technical requirements for the cobranded content should be stated in the agreement. Finally, the agreement should state the Uniform Resource Locators involved and a description of the content involved.

Content Placement and Hosting

The agreement should set forth where the cobranded page is to be displayed on the cobrander site and where the page is to be hosted.

Website Standards

Due to the close association between the parties, the agreement may include a provision which states that each party ensures certain minimum levels in maintenance and creation of its website including the following:

a. the technical operation of its site
b. the accuracy and appropriateness of posted materials
c. that materials posted on its site do not infringe
d. that materials posted on its site are not otherwise illegal
e. that its site has a privacy policy compliant with law

Tracking

The cobranded site should have a technical tracking systems to track users who get to the site from the cobrander site if there is a revenue sharing arrangement. The cobranded party may also want to include other requirement regarding tracking such as the following restrictions on the cobrander:

- trying to lure users to the cobranded site through offering of special promotions
- incorporating new devices such as Palm Pilots, phones or other items into the system, since most of these will not yet work well with online purchase and tracking systems
- trying to interfere with the cobranded site's business
- doing anything that could cause users to be confused about the sources of any products or services

Trademarks

The agreement should include a license or other statement giving permission for each party to display the other's trademarks for the purposes of the agreement and that such permission shall terminate upon termination of the agreement. Depending on extent of the trademark uses, this section may also include a trademark usage policy from the trademark owner.

Payment

The agreement should set forth when and how the revenue sharing payments will be issued and that a report detailing the sales and revenue achieved will accompany such payments. It is important to define under what circumstances payment is made (what if the cart is abandoned and then rediscovered, etc.) and what items will be deducted prior to calculation of the revenue payment percentage (such as tax, shipping, etc.) The cobrander may also wish to include an provision which permits auditing of the sales and accounting records of the cobranded party so that it has a way to periodically confirm the accuracy in reporting and payment.

Liability Limits

The agreement may state liability limits for the relationship. Such a provision could serve to limit liability if customers of the cobranded party sue the cobrander or if either party infringes third party rights with its content. The provision should also waives parties' responsibility for damages which are not "direct" legal damages.

Warranties and Indemnification

The agreement may contain a provision for indemnification in the case of infringement by any content created by either party. Indemnification means that in the event that the non-creating party gets sued by another party for infringement of a third party's rights, the creating party must reimburse the non-creating party for all costs and expenses resulting from this litigation.

Conclusion

Promotional agreements help clarify relationships and ensure intended results and proper payments. Advertising, Affiliate and Cobranding Agreement legal forms by the author are available for purchase **here**.

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Using Acrobat Reader, you can find areas for completion by reading the yellow notes with instructions by double clicking on them. After reading the notes, then select the Hand Tool on the top tool bar and move the pointer beside the note. You can then TYPE IN the information to be completed in these areas. Sections in 11 pt. font and capital letters must remain so to be legally valid.

You may print or save the forms for later use or emailing under the File tab at the top of the page.

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AGENCY ADVERTISING AGREEMENT

ADVERTISER _____

ADDRESS _____

_____

PHONE _____

CONTACT _____

LICENSED FOR PUBLICATION IN THE FOLLOWING MEDIA:

WEB ☐ *yes* ☐ *no*	*TV* ☐ *yes* ☐ *no*	*STREAMING* ☐ *yes* ☐ *no*
PRINT ☐ *yes* ☐ *no*	*WEBSITE URLS* ☐ *yes* ☐ *no*	*EMAIL* ☐ *yes* ☐ *no*
RADIO ☐ *yes* ☐ *no*	*OTHER WEB* ☐ *yes* ☐ *no*	*OTHER* ☐ *yes* ☐ *no*

LICENSE TERMS: _____

_____

_____

DEADLINE(S) FOR COPY SUBMISSION: _____

SCHEDULE FOR ADVERTISING: _____

RATE CREATIVE_____ RATE PRINT AD _____

RATE ARTWORK/IMAGES _____ RATE PHOTO/VIDEO _____

SUBTOTAL:

TOTAL PAYMENT AMOUNT USD:

PAYMENT TERMS: SCHEDULE OF PAYMENTS:

SPECIAL TERMS: _____

Your signature indicates the Advertiser's agreement to the Agency's terms and conditions on the back.

Please take a moment to review these before signing.

ADVERTISER SIGNATURE: _____

PRINTED NAME/TITLE:_____

DATE: _____

RECEIVED FOR AD PLACEMENT BY _____

10/9/01

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Advertising Terms and Conditions

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Termination: This Agreement may be terminated for (a) material breach by the other party upon thirty days notice and failure to cure; (b) immediately for failure to make any payment hereunder; or (c) by court order, arbitration order or other act of other governmental body resulting in suspension or termination of advertising or content and Agency shall not be liable for any such acts or resulting termination or damages. Upon termination, Advertiser shall immediately cease any and all use of content.

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JUDITH A. SILVER is the CEO and Founder of Silver Law Inc. which provides Coollawyer.com℠ legal advice and forms for Internet and technology companies. She served as in-house counsel at Adobe Systems and Sabre/Travelocity.com prior to starting Silver Law Inc. She holds a B.A. *cum laude* from Cornell University and her J.D. from University of California, Hastings College of the Law.

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